

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BONNIE M. & ELWIN L. MANICKE,)	DOCKET NO.: PT-2005-5
)	
Appellant,)	
)	
-vs-)	
)	FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW
OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

The above-entitled appeal was heard on June 20, 2006, in Polson, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was given as required by law. Elwin L. Manicke (Taxpayer) represented himself and Bonnie M. Manicke. Mr. Manicke presented evidence and testimony in support of the appeal. The Department of Revenue (DOR) was represented by Don Leuty, Appraiser, and David Gnose, Appraiser. DOR presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing.

All parties were afforded opportunity to present evidence, oral and documentary.

2. The subject properties are two adjacent lots described as:

Tract E of Certificate of Survey 4798 and Tract B of Certificate of Survey 4706 in the City of Polson, County of Lake, State of Montana (Assessor ID Numbers 23108 and 23096). (Appeal Form).

3. For tax year 2005, DOR assessed the subject properties at \$18,430 for Tract B (a vacant lot) and \$17,450 for Tract E (land only) for a total of \$35,880. (Exhibits A and B). There is a small shed on Tract E, (Exhibit B) the value of which is not being contested. (Testimony of Taxpayer).
4. The Taxpayer filed an AB-26 Request for Informal Review with the DOR on May 31, 2005, asking for an informal review meeting to provide additional information. (CTAB Exhibit 1). DOR did not meet with the Taxpayer. (Appeal Form).
5. On July 20, 2005, DOR documented their decision not to adjust the value of the subject property, noting:

Vacant land sales in 2002 and 2003 in Cramer Subdivision sold at or around value placed on your lots in that same subdivision. (CTAB Exhibit 1).

6. The Taxpayer filed an appeal with the Lake County Tax Appeal Board (CTAB) on July 27, 2005, requesting a total value for both lots of \$23,850, stating:

Value of this property is inconsistant [sic] with other properties in the area with similar configuration. DOR adjustment for size is inconsistant [sic] with the market. DOR assessed

value exceeds [sic] recent sales price for numerous properties. The request for informal meeting to provide additional information was not granted. (Appeal Form).

7. On November 16, 2005, the CTAB disapproved the appeal for the following reasons:

Valuation is consistent with appraised value set by DOR. These two lots are premium lots, are comparable to lots issued into exhibit. (Appeal Form).

8. The Taxpayer appealed that decision to the State Tax Appeal Board on November 21, 2005, stating:

Information provided by local DOR at appeal hearing was inaccurate or non-applicable. County Tax Appeal Board did not address the complaint. County Tax Appeal Board did not accept and/or consider oral statements that local DOR was inaccurate in their presentation. (Appeal Form).

TAXPAYER CONTENTIONS

The Taxpayer offers four reasons for this appeal. First, the Taxpayer asserts that "[v]alue of [subject] property is inconsistent with other properties in the area with similar configuration." (Appeal Form and Exhibit 7). The subject property is two adjoining lots under the same ownership. There is a small shed on one lot but the lots are otherwise vacant. The value of the shed is not contested. To demonstrate that DOR is inconsistent in how it values two adjacent lots in the same ownership, the Taxpayer has identified ten other properties with a similar configuration. Exhibit 6 is a map that shows the

location of these ten comparable properties and of the subject; the comparable properties are identified on the map by the letters A through J. According to the Taxpayer, DOR appraises each of these other properties as one large tract, although each actually consists of two smaller, adjoining lots in the same ownership, a similar configuration to the subject's.

The Taxpayer provides the following information about each comparable property. At the beginning of the current reappraisal cycle, Properties A and B each consisted of two adjoining, vacant lots. Since then, a house that spans the lot line, was built on Property A. (Exhibit 7). Properties C, D, and J each consist of two lots with a house on one lot and the other lot vacant. Properties E, F, G, and H each have a house on one lot and a garage on the second lot. Property I includes a house that may span the lot line between the two lots.

The Taxpayer reports that the DOR's reason for valuing the subject property as two separate lots is because "they have higher utility, i.e., they could be sold separately." (CTAB Exhibit 1). The Taxpayer documents that it would be possible to sell separately one of the two lots that comprise each of Comparable Properties A-J. In fact, the Taxpayer demonstrates that, since the current reappraisal cycle began, in two instances (Comparable Properties F and J) one of the lots **was** sold separately and a new house built on the lot that was sold.

(Exhibit 7). The Taxpayer maintains that Comparable Properties A-J refute the DOR rationale for valuing the subject as two lots because Properties A-J "were submitted **specifically because one of the two lots could be sold separately.**" (Taxpayer's Post-Hearing Submission).

As further evidence that DOR values lots with a similar configuration differently, the Taxpayer notes that two other properties in the same area (unidentified on Exhibit 6) are also comprised of two adjoining lots in one ownership. According to the Taxpayer, each of these properties has a house on one lot and the other lot is vacant (similar to Properties C, D, and J). For both of these properties, the DOR values each lot separately, as it has valued the subject property's lots separately. The Taxpayer maintains that:

In reviewing the valuation of the thirteen properties previously cited [Comparable Properties A through J, the subject property, and the two unidentified properties] it is obvious there is '**systematic**' and '**arbitrary**' discrimination. All of these properties are in close proximity in the same neighborhood. All were revalued during the same reappraisal cycle. All should be valued in a similar manner. Three of the thirteen properties are systematically and arbitrarily valued higher than the other ten. All are configured essentially the same. (Exhibit 7).

As a second reason for the appeal, the Taxpayer notes that DOR makes an adjustment for lot size in the value assigned to vacant lots. The Taxpayer contends that the adjustment DOR makes is inconsistent with the market.

In valuing vacant lots, DOR establishes a base lot size and a per square foot value for the base lot size. A second value (the "residual" per square foot value) is established for each square foot that a lot varies from the base size. If a lot is larger than the base size, the additional square footage is multiplied by the "residual" rate and that amount is added to the value of the base lot. If a lot is smaller than the base size, the additional square footage is multiplied by the "residual" rate and that amount is subtracted from the value of the base lot. This method causes smaller lots to have a higher value per square foot than larger lots. (Exhibit 7).

The subject property is two lots each of which is smaller than the base lot size established by DOR. Consequently, the subject, valued as two smaller lots, has a higher assessed value than it would have were it valued as one large lot.

In support of his position that the DOR adjustment for size is not consistent with the market, the Taxpayer provides the following table of information on eight sales of vacant land in the vicinity of the subject property. The sale properties are listed in size order with the largest lot listed first. (CTAB Exhibit 1):

Sale #	Date	Location	Size sq ft	Price	Price per sq ft	<u>Time Adjusted</u>		DOR Value	DOR Value per sq ft
						Price	Per sq ft		
H	4/29/04	42 Skyline	17,100	\$18,000	\$1.05	\$16,221	\$0.95	\$35,675	\$2.10
B	8/16/02	102 5th Ave E	14,000	35,000	2.50	35,923	2.57	19,900	1.42
D	6/10/03	24 B Ave W	10,155	15,000	1.48	14,426	1.42	28,130	2.77
C	2/28/03	280 20th Ave W	9,048	17,000	1.88	16,780	1.85	20,268	2.24
G	3/24/04	406 W 22 Ave	9,048	18,500	2.04	16,780	1.85	20,268	2.24
A	4/2/02	101 4th Ave W	7,000	18,500	2.64	19,615	2.80	17,450	2.49
E	6/17/03	511 7th Ave E	7,000	15,000	2.14	14,426	2.06	17,450	2.49
F	9/11/03	703 11th Ave E	6,336	15,500	2.45	14,619	2.31	17,218	2.72

In regard to this table, the Taxpayer states:

There is minimum correlation between size and price or between size and price per unit (square foot). Other factors such as location and time of sale appears [sic] to have more influence on total price and price per unit than does size. (CTAB Exhibit 1).

The Taxpayer uses this same set of eight sales in support of his third reason for the appeal: the DOR assessed value for lots exceeds the market value indicated by sales prices.

For six of the eight sales in the table above, the value per square foot, both at the time of sale and time-adjusted¹ to January 1, 2003, is lower than the DOR assessed value for the properties. The Taxpayer contends that this information demonstrates that the DOR assessed values exceed the market values set by sales prices.

The fourth reason the Taxpayer appealed this case is because "[m]uch of the information presented by the DOR [at the

¹ The Taxpayer developed a time adjustment from a paired sale among the eight sales (sales C and G) and adjusted all sales prices to January 1, 2003, to derive the values listed in the time-adjusted column. (CTAB Exhibit 1).

CTAB hearing] is inaccurate. In addition, relevant information was omitted." (Exhibit 7). To support these contentions, the Taxpayer introduced Exhibits 1 and 2, which were originally DOR Exhibits E and F at the CTAB hearing. Exhibit 2 is a table of information for four property sales, each identified by a color (red, blue, green, or orange) and for the two subject lots, identified by the color yellow. Exhibit 1 is a map of the locations of the four sale properties and the subject property.

As originally developed by DOR, Exhibit 2 indicates that the Red sale was for a 7,000 square foot lot. The Taxpayer demonstrates that this sale was actually for one and one-half lots with a total area of 10,500 square feet (Exhibit 4), causing a substantial change in the value per square foot (\$3.43 to \$2.29). For this and the other sale properties in Exhibit 2, the Taxpayer points out issues of zoning and restrictive covenants which were not considered by DOR. In regard to the sale information DOR originally included in the table for the subject property, the Taxpayer demonstrates that the first sale listed was for the purchase of two lots (Exhibit 5), not one, as indicated by DOR. The two lots totaled 19,600 square feet, not the 9,800 square feet shown by DOR in the table. As with the Red sale in the same table, this difference causes a substantial change in the sale value per square foot for the property (\$1.85 to \$0.92).

DOR CONTENTIONS

The DOR case in this appeal has three parts. First is the CALP, Computer Assisted Land Pricing. DOR uses CALP, a sales comparison model, to estimate market values for vacant land. At the request of the Board, DOR provided the CALP model used in valuing the subject property. (DOR Post-Hearing Submission). CALP models are based on sales that occur within a specific time period in one or more pre-defined geographic area(s) identified as neighborhoods.

The CALP model used for valuing the subject property is based on nineteen sales in two neighborhoods, one that includes the subject and the other adjacent to it. The R^2 value for this CALP is 0.9837². (DOR Post-Hearing Submission).

Based on the CALP, DOR established 10,000 square feet as the base size for lots in these two neighborhoods and \$1.85 as the base rate per square foot. The residual per square foot value is \$0.35. Given these values and the DOR method for deriving market values for vacant land, the value set by DOR for the subject property's 9,800 square foot lot is \$18,430 (Exhibit A, the Property Record Card for Tract B of COS 4706) and the value set for the subject's 7,000 square foot lot is \$17,450 (Exhibit B, the Property Record Card for Tract E of COS 4798),

² R^2 is the coefficient of determination of the CALP model. This statistic is one measure of the predictive accuracy of the model. R^2 values range from 0 to 1. The closer the value is to 1, the more reliable the model's estimate of value.

for a total value of \$35,880. The table below shows the calculations needed to arrive at these values:

	Tract B	Tract E
Base lot size (from CALP)	10,000 sf	10,000 sf
Size of subject lot	9,800 sf	7,000 sf
Difference (residual)	200 sf	3,000 sf
Value of base lot @ \$1.85/sf	\$18,500	\$18,500
Minus residual @ \$.35/sf	<70>	<1,050>
DOR value for lot	\$18,430	\$17,450
Value per square foot	\$1.88	\$2.49

Other DOR exhibits include a map of the subject property's location (Exhibit C), a photo of the subject (Exhibit D), a map of Polson with colored dots designating the locations of the subject and four other properties (Exhibit E), a table with information relating to the sales of the subject and the other four properties (Exhibit F), and the first page of the property record cards for the four sales properties (Exhibit G).

Exhibit F is a second part of the DOR case in this appeal. The table in this exhibit provides the Sale Date, Sales Price, Square Foot Area, and DOR Land Value for each of four properties in Polson and for the two subject lots. DOR contends that the sales information on the four properties corroborates the value DOR has placed on the subject properties. As DOR notes in their Post-Hearing Submission:

The comparable sales range from a low per square foot value of \$2.09 for a 9,048 square foot lot to a high value of \$2.64 for a 7000 square foot lot. The

appraised per square foot value on the subject properties is \$1.88 for the 9,800 square foot lot and \$2.49 for the 7000 square foot lot.

DOR acknowledges in their Post-Hearing Submission, however, that the lot they identified as Red is a larger lot than the size indicated in the table in their Exhibit F (10,500 square feet rather than the 7,000 square feet shown). At the correct size of 10,500 square feet, the sale price per square foot for the Red sale would be \$2.28, still within the range DOR contends corroborates their value for the subject.

As a third part of their case, in response to the Board's request, DOR provided the following information as a summary of the guidelines given to appraisers on when two adjacent lots in the same ownership are to be valued as a single lot:

In the case of two parcels that are under one ownership and located next to each other, (as in the case of the subject property) each would be valued separately and individually as long as the parcels could be sold separately and individually. This would be the market value of each parcel.

If, on the other hand, two parcels under one ownership and located next to each other have a dwelling that spans the lot line between the two parcels or encroaches on the zoning set back between the two parcels or utilizes access through one parcel to access the other parcel or has other accessory buildings on the other parcel or the owner has formally amended the plat to reflect the deletion of the lot line between the two parcels, then these would be among the justifiable reasons to consider that each parcel **could not** be sold separately and, as such, combined to establish market value. (DOR Post-Hearing Submission).

In regard to Comparable Properties A through J introduced by the Taxpayer, DOR states:

In the case of all of the properties listed by the taxpayer (except one owned by Montana Rail Link) the parcels in question are improved. . . . The situation of the improvements on these lots may or may not have been a determining factor in regard to the combining of the associated lots. (DOR Post-Hearing Submission).

DOR maintains that the CALP and the comparable sales detailed in Exhibit F support the per square foot value of the subject property as representing market value. In addition, the Department contends that the two subject lots should be valued separately because they can be sold separately and there are no improvements on either lot that are placed in a way that would require the lots to be valued as one large lot.

TAXPAYER'S REPLY TO DOR POST-HEARING SUBMISSION

In reply to the DOR Post-Hearing Submission, the Taxpayer points out that Sale 6 in the DOR CALP model consists of two lots valued by DOR as one large lot. Similarly, CALP Sale 7 consists of three lots valued by DOR as one large lot. All lots in both sales are vacant. The Taxpayer asserts that these two CALP sales further support his contention that the DOR value for the subject property is inconsistent with the value set by DOR for other properties of a similar configuration, i.e., adjacent lots in the same ownership. (Taxpayer's Post-Hearing Submission Exhibits 8 and 9 and Comments).

In his Post-Hearing Submission, the Taxpayer notes that the size listed in the CALP model for at least five of the CALP sales (Sales 11, 12, 17, 18, and 19) differs from the size shown on the survey or plat of the same lots. The Taxpayer identifies several other problems with the CALP model and with the map of the CALP neighborhoods, including questioning why the sales used in the CALP did not include all sales of unimproved lots within the CALP neighborhoods, noting that the boundaries for the CALP neighborhoods clearly extend beyond the area shown on the map provided by DOR and that the numbers used to identify the CALP neighborhoods were different on the map from those on the CALP model, questioning the use of sales from both medium density and low density residential zoning districts in the same CALP model, and maintaining that the manual overrides and rounding used in the CALP skew the final result.

BOARD DISCUSSION

DOR is charged with administering a mass appraisal system. The method used in this system to value vacant land is a sales comparison model, Computer Assisted Land Pricing (CALP). At the Board's request, DOR provided the following materials in a Post-Hearing Submission: the CALP model used as a basis for valuing the subject property, the property record cards for each sale included in the CALP model, and a map of the neighborhoods to which the CALP model applies (the map was flawed by not showing

the complete exterior boundaries of the relevant neighborhoods and by displaying a different neighborhood code from the one on the CALP data, but it did show the location of all the CALP sales and of the subject property). The R^2 value for this CALP is 0.9837 (DOR Post-Hearing Submission), which indicates that the user can be confident of the values derived from this model. (As indicated before, R^2 values range from 0 to 1. The closer the value is to 1, the more reliable the model's estimate of value.)

The statistical techniques applied to the sales in the CALP model are what determine the base lot size, value per base square foot, and value per residual square foot for a given neighborhood. For simplicity, DOR commonly rounds the square foot values, as they did in the CALP model scrutinized here. This rounding is shown in the CALP model as a "Manual Override".

The Taxpayer raises several legitimate questions about the accuracy and sufficiency of the data used in the CALP. However, each inaccuracy is small in itself and, in the Board's opinion, even when taken together, the inaccuracies are insufficient to skew the results of the CALP. For example, the Taxpayer notes that, in the CALP, Sale 11 is shown as a lot of 7,150 square feet; the plat shows the dimensions of the same lot as 143.9 feet X 50 feet, a total area of 7,195 square feet (Exhibit 1 in Taxpayer's Post-Hearing Submission). The difference in area

between the CALP and the plat is 45 square feet which results in a \$15 difference in assessed value for the lot (\$17,503 versus \$17,518). (Exhibit 1 in Taxpayer's Post-Hearing Submission).

As part of the standard mass appraisal system, DOR uses a size adjustment in setting values for vacant land. As a result of this approach, smaller lots are valued at more per square foot than larger lots. The Taxpayer questions this size adjustment and points to market sales of lots at prices that differ from the values that would be derived for the same lots from the DOR method.

The purpose of the CALP is to provide a consistent and reliable means of estimating the value of lots based on the sales of comparable lots for a given area. The Department is not required to include in a CALP model every sale that might qualify, only a sufficient number to make the statistical techniques applied to the sales valid. In addition, DOR is required by state law to verify that the sales used in the CALP are true market transactions as market value is defined in statute (Section 15-8-111(1) and (2)(a), Montana Code Annotated). Theoretically, it would always be possible to find some lot sales for prices that vary from the value estimated by the CALP. Such sales may have occurred at a different time or under conditions that are not true market conditions or it may not have been possible for DOR to reach someone who could verify

the sales information as a market transaction. In the Board's opinion, the existence of some sales for prices that vary from what the DOR value for the same lots would be is not enough on its own to overturn the DOR value.

The DOR introduced corroborating sales information to support the value set for the subject lots. (Exhibits E, F and G). This information was flawed and of little value to the Board. The CALP is the basis for the value assigned to the subject and it is the CALP and the documentation of the CALP that counts.

The Taxpayer makes a strong case that the Department has been arbitrary in its decisions about when two adjoining lots in the same ownership are valued as one large lot or as two smaller lots. DOR cannot point to any rules or standard written policies that guide their appraisers in making these determinations. The Taxpayer essentially refutes all the justifications DOR put forward for valuing the two adjoining lots as a single lot. In addition, DOR undercut its own justifications by stating, "The situation of the improvements on these lots [Taxpayer's Comparable Properties A-J] **may or may not** have been a determining factor in regard to the combining of the associated lots." (Emphasis added, DOR Post-Hearing Submission).

Most of DOR's justifications for valuing two adjoining lots as a single lot depend on "the situation of the improvements" on the two lots. If that "may not have been a determining factor", then on what basis **were** the associated lots combined for tax purposes?

If this were the only information available to the Board on this issue, the Taxpayer could have prevailed. However, the legal description on the property record card for one of the subject lots is "Tract B of COS [Certificate of Survey] 4706". (Exhibit A). The legal description on the property record card for the other subject lot is "Tract E of COS 4798". (Exhibit B). In contrast, the legal descriptions on the property record cards for the Taxpayer's comparable properties A-J all indicate adjoining lots in the same block of a particular subdivision. For example, "Lots 5 and 6 in block 8 of the Lake Shore Addition to the City of Polson" describes comparable property A. (DOR Post-Hearing Submission).

The legal descriptions for the subject lots reference different certificates of survey. As a result, it is clear that each lot at issue was created separately, through a separate survey, unlike the comparable properties which were created simultaneously as a part of the same subdivision. Logically, lots created separately would have come on the tax rolls separately. Based on the record, each lot has also been deeded

separately. (Taxpayer Exhibit 5). It is appropriate for two lots that were created separately and deeded separately to continue to be appraised as separate lots unless and until the Taxpayer takes the steps necessary to have the two lots considered one for tax purposes. This appeal might have been avoided entirely had that been made clear in the informal meeting the Taxpayer initially requested but the Department never granted.

The Taxpayer is the appellant in this proceeding and therefore has the burden of proof. This Board must evaluate the evidence that it has been presented and issue an opinion of value based upon a preponderance of the evidence. It is the opinion of this Board, based on the evidence presented, that the subject property is appropriately assessed as two lots and that the evidence supports a value of \$18,430 for Tract B of COS 4706 and a value of \$17,450 for Tract E of COS 4798.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. §15-8-111, MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. §15-8-111, MCA. Assessment - market value standard - exceptions. (2)(a) Market value is the value at which

property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

4. *Western Airlines, Inc. v. Catherine Michunovich, et. al.*, 149 Mont. 347, 428 P.2d 3, (1967).

5. The appeal of the Taxpayer is hereby denied and the decision of the Lake County Tax Appeal Board is affirmed.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the local Department of Revenue office at \$18,430 for Tract B of COS 4706 and \$17,450 for Tract E of COS 4798.

The decision of the Lake County Tax Appeal Board is hereby affirmed.

Dated this 31st day of August 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

JOE R. ROBERTS, Member

SUE BARTLETT, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of September, 2006, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Bonnie M. & Elwin L. Manicke
901 - 5th Ave E
Polson MT 59860

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Tracy Lame
Property Assessment Division
Department of Revenue
Helena MT 59620

Don Leuty
Lake County Appraisal Office
106 Fourth Avenue East
Polson MT 59860-2182

Walter Schock, Chairperson
Lake County Tax Appeal Board
2663 Hi Hi Tah
St. Ignatius MT 59865

DONNA EUBANK
Paralegal